



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Ms. Linda Oaks
Custodian of Records
City of League City
Police Department
500 W. Walker Street
League City, Texas 77573

OR96-0414

Dear Ms. Oaks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39020.

The City of League City (the "city") received a request for information from Mr. David W. Showalter under the Open Records Act for the following information: "copies of all statements taken from my clients and any other materials obtained during your investigation of this claim." You state that you have released to Mr. Showalter copies of his clients' statements. The remaining information at issue pertains to an internal affairs investigation into certain allegations made by Mr. Showalter's clients against one of the city's police officers. We note at the outset that the city received the open records request on February 9, 1996. You requested a decision from this office on February 21, 1996. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock* at 381. Although you contend that the requested information comes under the

protection of sections 552.103 and 552.108 of the Government Code, you have not presented this office with compelling reasons for withholding the information pursuant to these sections. Accordingly, we deem these exceptions as being waived.

However, a demonstration that the requested information is deemed confidential by law does present a compelling reason for nondisclosure. Open Records Decision No. 552 (1990). You contend that the internal affairs investigation is made confidential under section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the fire fighters' and police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

(2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter

....

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

....

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. (Emphasis added.)

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel files maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 provides for the creation of

two personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department.

Information contained in personnel files held by the civil service must be released to the public unless the information comes within one of the Open Records Act's exceptions to required public disclosure. However, in your February 21, 1996 letter to this office you appear to suggest that the records of the internal affairs investigation are not part of the civil service file, but rather are a part of only the city police department's internal personnel file. In a letter seeking a ruling from this office you stated:

Although the officer was found to have violated department policy, he was not disciplined. He received a counseling letter. The purpose of a counseling letter is corrective not disciplinary. A counseling letter can not be appealed to the Civil Service Commission.

Assuming that the records at issue were properly withheld from the civil service file and therefore exist only as part of the police department's personnel file as contemplated by section 143.089(g), we agree that this information is confidential and therefore must be withheld from the public. The records otherwise must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/ch

Ref: ID# 39020

Enclosure: Submitted records

cc: Mr. David W. Showalter
5959 West Loop South, Suite 424
Bellaire, Texas 77401-2484
(w/o enclosures)